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ADEMPTION.

See WILL, 2.

ADMIRALTY.

1. Bales of wool were stowed on a steamship, with proper dunnage, between decks and forward of a temporary wooden bulkhead. At a subsequent port, wet sugar (from which there is always drainage) was stowed aft of that bulkhead, with proper dunnage, but without any provision for carrying off the drainage in case it ran forward. The ship was then down by the stern, and all drainage from the sugar was carried off by the scuppers. At a third port, other cargo was discharged, so as to trim the vessel two feet by the head; and the drainage from the sugar found its way through the bulkhead, and damaged the wool, through negligence of those in charge of the ship and cargo. *Held:* That the damage to the wool was through fault in the proper loading or stowage of the cargo, within section 1 of the act of February 13, 1893, c. 105, known as the Harter Act, and not from fault in the navigation or management of the vessel, within section 3 of that act. *Knott* v. *Botany Mills*, 69.
2. The words, in section 1 of the Harter Act, "any vessel transporting merchandise or property from or between ports of the United States and foreign ports," include a foreign vessel transporting merchandise from a foreign port to a port of the United States; and such a vessel and its owner are therefore liable for negligence in proper loading or stowage of the cargo, notwithstanding any stipulations in the bill of lading that they shall be exempt from liability for such negligence, and that the contract shall be governed by the law of the ship's flag. *Ib.*
3. In a charter-party which contains a clause for cesser of the liability of the charterers, coupled with a clause creating a lien in favor of the shipowner, the cesser clause is to be construed, if possible, as inapplicable to a liability with which the lien is not commensurate. *Crossman* v. *Burrill*, 100.
4. By a charter-party, the charterers agreed to pay a stipulated rate of freight on proper delivery of the cargo at the port of destination, and to discharge the cargo at that port, at the rate of an average amount daily; and the charter-party contained these clauses: "The bills of lading to be signed as presented, without prejudice to the charter." "Vessel to have an absolute lien upon the cargo for all freight, dead freight and demurrage. Charterers' responsibility to cease when the vessel is loaded and bills of lading are signed." The bills of lading provided

that the cargo should be delivered to the charterers or their assigns, "they paying freight as per charter-party, and average accustomed;" but did not mention demurrage. *Held:* That the cesser clause did not affect the liability of the charterers to the ship-owners for demurrage according to the charter-party. *Ib.*

5. A provision in a charter-party, obliging the charterers to discharge the cargo at the port of destination at the average rate of a certain amount per day, and requiring them to pay a certain sum for every day's detention "by default of" the charterers, does not make them liable for a detention caused by the actual firing of guns from an enemy's ships of war upon the forts in the harbor, rendering the discharge of the cargo dangerous and impossible. *Ib.*
6. In June, 1893, the Linda Park was moored to a dock at pier 48, East River, New York City. While there she was struck and injured by the steam fire-boat New Yorker, as it was running into the slip between piers 48 and 49, for the purpose of getting near another fire-boat then in the slip. Both boats had been called to aid in extinguishing a fire in a warehouse near the slip bulkhead. A libel was filed by Workman in the District Court of the United States to recover for the damage occasioned to his vessel by the collision. This libel was amended by adding as respondents the fire department of New York and Gallagher, who was in charge of the navigation of the New Yorker and the necessary allegations were made. The District Court entered a decree in favor of the libellant against the city and Gallagher, and dismissed the libel as to the fire department. The Circuit Court of Appeals affirmed the decree against Gallagher and in favor of the fire department, but reversed that portion which held the city liable. The case being brought here on certiorari, it is *held* that the District Court rightly decided that the mayor, aldermen and commonalty of the city of New York were liable for the damages sustained by the owner of the Linda Park. *Workman* v. *New York City &c.*, 552.
7. The local decisions of a State cannot, as a matter of authority, abrogate maritime law. *Ib.*
8. Under the general maritime law, where the relation of master and servant exists, an owner of an offending vessel, committing a maritime tort is responsible, under the rule of *respondeat superior*. *Ib.*

There is no limitation taking municipal corporations out of the reach of the process of a court of admiralty. *Ib.*

10. The public nature of the service upon which a vessel is engaged, at the time of the commission of a maritime tort, affords no immunity from liability in a court of admiralty, when the court has jurisdiction. *Ib.*
11. While it is true that the emergency of fire was an element to be considered, in determining whether or not those in charge of the fire-boat were negligent, it does not follow that it exempted from the exercise of such due care as the occasion required towards property which was in the path of the fire-boat as it approached the slip. *Ib.*
12. A ship, by whomsoever owned or navigated, is liable for an actionable injury resulting from the negligence of the master and crew of the vessel. *Ib.*

13. A recovery can be had *in personam* for a maritime tort, when the relation existing between the owner and the master and crew of the vessel, at the time of the negligent collision, was that of master and servant. *Ib.*

See JURISDICTION, A, 1.

CASES AFFIRMED AND FOLLOWED.

1. These cases were argued with *Saxlehner* v. *Eisner & Mendelson Co.*, *ante*, 40. The answer in them was substantially the same as in that case, and the same record of proofs was used. *Held* that an injunction should issue against all the defendants, but as the Siegel-Cooper Company acted in good faith, it should not be required to account for gains and profits. *Saxlehner* v. *Siegel-Cooper Co.*; v. *Gries*; and v. *Marquet*, 42.
2. Defendant was prosecuted for selling bitter waters under the name of "Hunyadi Lajos." *Held*, That although the proof of laches on the part of the plaintiff was not as complete as in the former case the same result must follow, and that the bill must be dismissed as to the word "Hunyadi" and sustained as to the infringement of the bottles and labels. *Saxlehner* v. *Nielsen*, 43.
3. *New York State* v. *Barber* (*No. 1*), followed. *N. Y. State* v. *Barber* (*No. 2*), 287.
4. Following the decision and the concurring opinion in *Stearns* v. *Minnesota*, *ante*, 233, the court holds that the act of the legislature of Minnesota relied upon was void. *Duluth & Iron Range Railroad* v. *St. Louis County*, 302.
5. This case having been argued with No. 12, *ante*, 415, at the same time and by the same counsel, the decision of the court in that case is followed in this. *Chicago, Milwaukee & St. Paul Railway Co.* v. *Bosworth*, 442.
6. This case having been argued with No. 12, *ante*, 415, at the same time, and by the same counsel, the decision of the court in that case is followed in this. *Rau* v. *Bosworth*, 443.
7. This case having been argued with No. 12, *ante*, 415, at the same time, and by the same counsel, the decision of the court in that case is followed in this. *Bosworth* v. *Carr*, *Ryder & Engler Co.*, 444.

See CRIMINAL LAW.
JURISDICTION, B, 3.

CERTIORARI.

See MILITARY TRIBUNALS.

CIGARETTES.

1. Tobacco being a legitimate article of commerce, the court cannot take judicial notice of the fact that it is more noxious in the form of cigarettes than in any other. It is, however, to the same extent as intoxicating liquors, within the police power of the State. *Austin* v. *Tennessee*, 343.

2. It is within the province of the legislature to declare how far cigarettes may be sold, or to prohibit their sale entirely, after they have been taken from the original packages or have left the hands of the importer, provided no discrimination be used as against those imported from other States, and there be no reason to doubt that the act in question is designed for the protection of the public health. *Ib.*
3. Original packages are such as are used in *bona fide* transactions carried on between the manufacturer and wholesale dealers residing in different States. Where the size of the package is such as to indicate that it was prepared for the purpose of evading the law of the State to which it is sent, it will not be protected as an original package against the police laws of that State. *Ib.*
4. Where cigarettes were imported in paper packages of three inches in length and one and one half in width, containing ten cigarettes, unboxed but thrown loosely into baskets, *held*, that such paper parcels were not original packages within the meaning of the law, and that such importations were evidently made for the purpose of evading the law of the State prohibiting the sale of cigarettes. *Ib.*

CITIZENSHIP.

1. Texas was an independent State when admitted into the Union, and the effect of the admission was to make its citizens, citizens of the United States. But those who, at that time, could only become citizens by naturalization, were thereupon relegated to the laws of the United States in that behalf. *Contzen* v. *United States*, 191.
2. Minor aliens in Texas, separated from their parents, were not made citizens of the United States by the admission, and in order to become such were obliged to comply with the requirements of the laws of the United States. *Ib.*
3. As appellant was a German subject and not a citizen of Texas when Texas became one of the United States, and had not been naturalized when the injury complained of was inflicted, the Court of Claims was right in dismissing his petition for want of jurisdiction. *Ib.*

CONSTITUTIONAL LAW.

1. The right to vote for members of Congress is not derived merely from the constitution and laws of the State in which they are chosen, but has its foundation in the Constitution and laws of the United States. *Wiley* v. *Sinkler*, 58.
2. The Circuit Court of the United States has jurisdiction of an action brought against election officers of a State to recover damages, alleged to exceed the sum of $2000, for refusing the plaintiff's vote for a member of Congress. *Ib.*
3. In an action against election officers of the State of South Carolina for refusing the plaintiff's vote at an election, the declaration must allege that the plaintiff was a registered voter, as is required by the constitution and laws of the State. *Ib.*
4. A state statute imposing a license tax upon persons and corporations carrying on the business of refining sugar and molasses does not, by ex-

empting from such tax "planters and farmers grinding and refining their own sugar and molasses," deny sugar refiners the equal protection of the laws within the Fourteenth Amendment. *American Sugar Refining Co.* v. *Louisiana*, 89.

5. The prohibition in the Constitution of the United States of the taking of private property for public use without just compensation has no application to the case of an owner of land bordering on a public navigable river, whose access from his land to navigability is permanently lost by reason of the construction, under authority of Congress, of a pier resting on submerged lands away from, but in front of his upland, and which pier was erected by the United States, not with any intent to impair the right of riparian owners. but for the purpose only of improving the navigation of such river. *Scranton* v. *Wheeler*, 141.
6. It was not intended, by that provision in the Constitution, that the paramount authority of Congress to improve the navigation of the public waters of the United States should be crippled by compelling the Government to make compensation for an injury to a riparian owner's right of access to navigability that might incidentally result from an improvement ordered by Congress. *Ib.*
7. In this record there is no averment and no proof of any violation of law by the assessors of New York. The mere fact that the law gives the assessors in the case of corporations two chances to arrive at a correct valuation of the real estate of corporations when they have but one in the case of individuals, cannot be held to be a denial to the corporation of the equal protection of the laws, so long as the real estate of the corporation is, in fact, generally assessed at its full value. *New York* v. *Barker* (*No. 1*), 279.
8. This court cannot, with reference to the action of the public and sworn officials of New York city, assume, without evidence, that they have violated the laws of their State, when the highest court of the State refuses, in the absence of evidence, to assume such violation. *Ib.*
9. By a general revenue act of the State of Georgia, a specific tax was levied upon many occupations, including that of "emigrant agent," meaning a person engaged in hiring laborers to be employed beyond the limits of the State. *Held* that the levy of the tax did not amount to such an interference with the freedom of transit, or of contract, as to violate the Federal Constitution. *Williams* v. *Fears*, 270.
10. Nor was the objection tenable that the equal protection of the laws was denied because the business of hiring persons to labor within the State was not subjected to a like tax. *Ib.*
11. The impostion of the tax fell within the distinction between interstate commerce, or an instrumentality thereof, and the mere incidents which may attend the carrying on of such commerce. These labor contracts were not in themselves subjects of traffic between the States, nor was the business of hiring laborers so immediately connected with interstate transportation or interstate traffic that it could correctly be said that those who followed it were engaged in interstate commerce, or that the tax on that occupation constituted a burden on such commerce. *Ib.*
12. The providing, at the place of intersection of the two railroads affected

by this case, ample facilities for transferring cars used in the regular business of the respective lines, and to provide facilities for conducting the business, while it would afford facilities to interstate commerce, would not regulate such commerce within the meaning of the Constitution. *Wisconsin, Minnesota &c. Railroad* v. *Jacobson*, 287.

13. The tracks of the two railroads being connected, the making of joint rates is a matter primarily for the companies interested, and the objection that there is any violation of the interstate commerce clause of the Constitution is untenable. *Ib.*

14. Whether a judgment enforcing trade connections between two railroad corporations is a violation of the constitutional rights of either or both depends upon the facts surrounding the cases in regard to which the judgment was given. *Ib.*

15. In this case the judgment given does not violate the constitutional rights of the plaintiff in error. *Ib.*

16. The Supreme Court of the State of Missouri having decided that the provision of the state constitution respecting the enactment of registration laws does not limit the power of the general assembly to create more than one class composed of cities having a population in excess of one hundred thousand inhabitants, this conclusion must be accepted by this court. *Mason* v. *Missouri*, 328.

17. The general right to vote in the State of Missouri is primarily derived from the State; and the elective franchise, if one of the fundamental privileges and immunities of the citizens of St. Louis, as citizens of Missouri and of the United States, is clearly such franchise, as is regulated and established by the laws or constitution of the State in which it is to be exercised. *Ib.*

18. The power to classify cities with reference to their population having been exercised, in this case, in conformity with the constitution of the State, the circumstances that the registration law in force in the city of St. Louis was made to differ in essential particulars from that which regulated the conduct of elections in other cities in the State of Missouri, does not, in itself, deny to the citizens of St. Louis the equal protection of the laws; nor did the exercise by the general assembly of Missouri of the discretion vested in it by law, give rise to a violation of the Fourteenth Amendment to the Constitution of the United States. *Ib.*

19. The separate coach law of Kentucky, being operative only within the State, and having been construed by the Supreme Court of that State as applicable only to domestic commerce, is not an infringement upon the exclusive power of Congress to regulate interstate commerce. *Chesapeake & Ohio Railway Co.* v. *Kentucky*, 387.

20. The statute of Ohio, known as the Dow law, which levies a tax upon the business of trafficking in spirituous, vinous, malt or any intoxicating liquors, carried on within the State, is not in conflict with the provisions of the Constitution of the United States when applied to a corporation of West Virginia, having its principal place of business in Wheeling in that State, and manufacturing there beer which it sends in barrels, or wooden cases containing several bottles each, to Ohio for sale, or for storing in the original barrels, cases or bottles, to be sent

out as stored to the State of Ohio for disposition and sale. *Reymann Brewing Co.* v. *Brister*, 445.

21. The Dow law is within the scope of the police power of the State, and does not discriminate between foreign and domestic dealers. *Ib.*

See CORPORATION, 1;
TAXATION.

CONSTITUTIONAL LAW OF THE STATES.

See MUNICIPAL CORPORATION.

CORPORATION.

A power reserved by the constitution of a State to its legislature, to alter, amend or repeal future acts of incorporation, authorizes the legislature, in order "to secure the minority of stockholders, in corporations organized under general laws, the power of electing a representative membership in boards of directors," to permit each stockholder to cumulate his votes upon any one or more candidates for directors. *Looker* v. *Maynard*, 46.

COSTS.

For reasons stated in the opinion of the court a motion to retax costs in this case is granted and the costs modified accordingly. *Sully* v. *American National Bank*, 68.

CRIMINAL LAW.

In re Henry, 123 U. S. 372, affirmed and followed to the point that three separate offences against the provisions of Rev. Stat. § 5480, when committed within the same six calendar months, may be joined, and when so joined there is to be a single sentence for all. *In re De Bara*, 316.

CUSTOMS DUTIES.

1. These cases are concerned with the classification of certain articles imported by the respondents under the tariff act of 1890. Those imported by E. A. Morrison & Son were variously colored in imitation of "cat's eyes" or "tiger's eyes," and were strung. Others were colored in resemblance to the garnet, aqua marine, moonstone and topaz. Those imported by Wolff & Co. were in imitation of pearls, it is claimed, and were also strung. The contention is as to how they shall be classified or made dutiable—whether under paragraph 108 or under paragraph 454 of the act of 1890. *Held* that if the act of 1890 did not as specifically provide for beads as prior acts, glass beads as such were in the legislative mind and their various conditions contemplated. It was impossible to have in contemplation glass beads, loose, unthreaded and unstrung (445), and not have the exact opposite in contemplation—beads not loose, beads threaded and strung, and made provision for them. What provision? Were they to be dutiable at the same or at a higher rate than beads unthreaded or unstrung? If at the same rate—if *all* beads were to be dutiable at the same rate, why have qualified any of them?

Were some to be dutiable at one rate and some at another rate? If made of plain glass, were they to be dutiable at sixty per centum under paragraph 108; if tinted or made to the color of some precious stone, were they to be dutiable at ten per centum under paragraph 454? No reason is assigned for such discrimination, and we are not disposed to infer it. It is a more reasonable inference that beads threaded of all kinds were intended to be dutiable at a higher rate than beads unthreaded, and if there can be a choice of provisions that intention must determine. Indeed, admitting that either provision (paragraph 108 or paragraph 454) equally applied, the statute prescribed the rule to be that "if two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates." *United States* v. *Morrison*, 456.

2. It is the meaning of the tariff act of July 24, 1897, to subject to different rates of duty the leaves of tobacco suitable for cigar wrappers and those not suitable when mixed in the same commercial bale or package. *Rothschild* v. *United States*, 463.

3. It is the meaning of said act to subject to the duty of one dollar and eighty-five cents per pound the leaves of tobacco suitable for cigar wrappers intermingled in the bales or packages of tobacco (unstemmed) of the description which, in their entirety at the date of the enactment, were commercially known in this country as "filler tobacco," and bought and sold by that name, notwithstanding such leaves constitute less than fifteen per centum of the contents. *Ib.*

DAMAGES.

In *Smith* v. *Bolles*, 132 U. S. 125, it was *held* that, "in an action in the nature of an action on the case to recover from the defendant damages which the plaintiff has suffered by reason of the purchase of stock in a corporation which he was induced to purchase on the faith of false and fraudulent representations made to him by the defendant, the measure of damages is the loss which the plaintiff sustained by reason of those representations, such as the money which he paid out and interest, and all outlays legitimately attributable to the defendant's fraudulent conduct; but it does not include the expected fruits of an unrealized speculation; and further that, in applying the general rule that 'the damage to be recovered must always be the natural and proximate consequence of the act complained of' those results are to be considered proximate which the wrong-doer, from his position, must have contemplated as the probable consequence of his fraud or breach of contract." In this case that decision is affirmed and applied to the facts and issues here, and it is *held* that, upon the assumption that the property was not worth what the plaintiffs agreed to give for it, they were entitled, a verdict being rendered in their favor, and if the evidence sustained the allegation of false and fraudulent representations upon which they relied and were entitled to rely, to have a verdict and judgment, representing in damages the difference between the real value of the property at the date of its sale to the plaintiffs and the price paid for it, with interest from that date, and, in addition, such outlays as were

legitimately attributable to the defendant's conduct, but not damages covering "the expected fruits of an unrealized speculation." *Sigafus* v. *Porter*, 116.

ELECTION LAWS.

See MUNICIPAL CORPORATION.

ESTOPPEL.

On the facts stated in the statement of the case, *held* that the court below was right in deciding that the plaintiffs in error were estopped by virtue of the lease from the defendant in error, under which two of the plaintiffs in error acquired possession of the premises in dispute, from maintaining this action. *Lowry* v. *Silver City Gold & Silver Mining Co.*, 196.

INDIAN.

1. By the treaty with the Kiowa and Comanche Indians of August, 1868, the Indians agreed not to attack any persons at home or travelling, and not to molest any persons at home or travelling, or molest any wagon trains, coaches, mules or cattle belonging to the people of the United States, or persons friendly therewith; and the United States agreed that no persons except those authorized by the treaty to do so, and officers, etc., of the Government should be permitted to pass over the Indian Territory described in the treaty. In 1877 Andrews passed over the territory with a large number of cattle, travelling over the Chishom trail, the same being an established trail *en route* from Texas to a market in Kansas. He being convicted on trial for a violation of the treaty, appeal was taken to this court. *Held:* (1) That the finding of the court below was equivalent to a finding that the trail was a lawfully established trail permitted by the laws of the United States; (2) That as the plaintiff was lawfully within the territory, he was not a trespasser at the time his property was taken. *United States* v. *Andrews*, 96.
2. On the 4th of June, 1891, the United States and the Wichita and Affiliated Bands of Indians entered into an agreement whereby the Indians ceded to the United States a tract of land which is described in the opinion of the court in this case, and the United States agreed in consideration thereof that out of the territory so ceded there should be allotted to each member of the Wichita and Affiliated Bands of Indians in the Indian Territory, native and adopted, one hundred and sixty acres of land in the manner and form described in the agreement. This agreement was ratified by the Indian Appropriations Act of March 2, 1895, which further conferred jurisdiction upon the Court of Claims, to hear and determine the claim of the Choctaws and the Chickasaws to a right, title and interest in the lands so ceded, and to render judgment thereon, with a right of appeal to this court. Pursuant to that act this suit was brought. The Court of Claims, after reciting that the lands in dispute were acquired by the United States "*in trust* for the settlement of Indians thereon, and in trust and for the benefit of said claimant Indians when the aforesaid trust shall cease;" that "the Wichita

and Affiliated Bands of Indians were by the United States located within the boundaries of the lands hereinbefore described;" that they "now number not more than one thousand and sixty persons;" and that the location of the Wichitas and Affiliated Bands within said boundaries was "for the purpose of affording them permanent settlement therein," adjudged that the lands in dispute had been acquired and were held by the United States in trust for the purpose of settling Indians thereon, and that whenever that purpose was abandoned as to the whole or any part thereof, then all the lands not so devoted to Indian settlement should be held in trust by the United States for the Choctaw and Chickasaw Indians exclusively. It was also adjudged that the members of the Wichita and Affiliated Bands, not exceeding one thousand and sixty, were equitably entitled to one hundred and sixty acres of land each out of the lands in dispute, and that the same should be set apart to them by the United States, due regard being had to any improvements made thereon by them respectively for their permanent settlement. It was further adjudged that the Choctaw and Chickasaw Nations were in law and equity entitled to and were the owners of such of the lands ceded to the United States by the Wichita and Affiliated Bands as remained, after satisfying the provisions for the Wichitas and Affiliated Bands, and that in the event of the sale thereof by the United States, the Indian plaintiffs should be entitled to and receive the proceeds of such sale. This judgment being brought here on appeal, this court, in its opinion, carefully reviewed all the legislation, and all the Indian treaties on the subject, and, as a result, held that for the reasons given the decree must be reversed with directions to dismiss the petition of the Choctaw and Chickasaw Nations, and to make a decree in behalf of the Wichita and Affiliated Bands of Indians fixing the amount of compensation to be made to them on account of such lands in the Wichita Reservation as are not needed in order to meet the requirements of the act of Congress of March 2, 1895, c. 188, and for such further proceedings as may be consistent with law and with this opinion. *United States* v. *Choctaw Nation and Chickasaw Nation*, 494.

INJUNCTION.

In July, 1895, Harold F. Hadden and James E. S. Hadden brought an action in the New York Supreme Court for the city and county of New York, against the Natchaug Silk Company, Michael F. Dooley, personally and as receiver of the First National Bank of Willimantic, John A. Pangburn, and others, including William I. Buttling, sheriff of Kings County. The complaint alleged certain fraudulent and collusive proceedings between the Natchaug Silk Company, Dooley, receiver of the First National Bank of Willimantic, and John A. Pangburn, and, under a prayer of the bill, an injunction *pendente lite* was granted restraining the sheriff of Kings County from selling property of the silk company in his possession as sheriff upon executions against said company in favor of John A. Pangburn or Dooley, as receiver, and restraining Pangburn and Dooley from further proceedings at law against the

property of the silk company in the State of New York. The action was removed to the Circuit Court of the United States for the Southern District of New York, and repeated motions to dissolve the temporary injunction were there made and denied, and the order of the Circuit Court denying the motions was, on appeal, affirmed by the Circuit Court of Appeals. Subsequently, the taking of testimony in the case having been closed, the defendants Dooley and Pangburn made another motion, upon the plenary proofs, to dissolve the injunction, and this motion was granted, after hearing, by Circuit Judge Lacombe, on November 27, 1896. The case came to final hearing in the Circuit Court, and resulted in the decree dismissing the bill on January 27, 1898. Upon appeal by the complainants the Circuit Court of Appeals reversed the decree in part and affirmed it in part. From this decree of the Circuit Court of Appeals the complainants appealed to this court, on the ground that the decree should have adjudged to the complainants priority of lien on all the goods in dispute; and the defendants appealed on the ground that the Circuit Court of Appeals erred in reversing the decree of the Circuit Court. The facts, as stated in the opinion of Circuit Judge Shipman, were substantially these: On April 23, 1895, the Natchaug Silk Company, a Connecticut corporation, owed the First National Bank of Willimantic, a national banking association located in Connecticut, over $300,000, and was entirely insolvent. In consequence of this indebtedness the bank suspended, and Michael F. Dooley was appointed its receiver on April 26, 1895, by the Comptroller of the Currency. On April 23, 1895, J. D. Chaffee, as president and general manager of the silk company, in consideration of and to reduce this indebtedness, sold to the bank 107 cases of manufactured silk, the value of which cannot be accurately ascertained, but which is said to be about $20,000. They were then, or had been, shipped to New York, where they were subsequently taken by Dooley into his possession, and removed to Brooklyn. On May 8, 1895, he, as receiver, attached the goods by attachment, which was subsequently dissolved. On May 30, 1895, he sold and assigned to Pangburn, who is a resident of the State of New York, notes of the silk company, not paid by this transfer, amounting to about $67,000, for the nominal consideration of $200, which sale Dooley made by virtue of an order of the Circuit Court of the Southern District of New York, with the approval of the Comptroller of the Currency, for the purpose of enabling a suit to be brought in the State of New York, by a resident of that State, in his own name, against the silk company, a foreign corporation. Pangburn did bring suit on said notes against the silk company on June 1, 1895, in the proper state court, and obtained an order of attachment, a judgment for the full amount thereof, and an execution which was levied by the sheriff of Kings County upon these cases of silk. The sale was stopped by this injunction order. On June 6, 1895, the complainants, who are creditors of the silk company, brought suit against it in a court of the State of New York, and obtained an order of attachment, under which the sheriff of Kings County levied an attachment upon the same silk. On June 6, 1895, the complainants, who are creditors of the silk com-

pany to the amount of about $22,000, brought suit against it in a court of the State of New York, and obtained an order of attachment under which the sheriff of Kings County levied an attachment upon the same silk. On July 2, 1895, the complainants brought a bill in equity, upon which the injunction order in question in this suit was issued. *Held*, that the decree of the Circuit Court of Appeals, in so far as it reversed the decree of the Circuit Court, should be reversed, and the decree of the Circuit Court, dismissing the bill of complaint, should be affirmed. *Dooley* v. *Hadden*, 646.

See CASES AFFIRMED AND FOLLOWED, 1.

INSOLVENCY.

An assignment in insolvency does not disturb liens created prior thereto expressly or by implication in favor of a creditor. *Joyce* v. *Auten*, 591.

INSURANCE (LIFE).

The provision in the statutes of New York that "no life insurance company doing business in the State of New York shall have power to declare forfeited or lapsed any policy hereafter issued or renewed, by reason of non-payment of any annual premium or interest, or any portion thereof, except as hereinafter provided," does not apply to or control such a policy issued by a corporation of New York in another State, in favor of a citizen of the latter State, but is applicable only to business transacted within the State of New York; and in such case the rights of the parties are measured by the terms of the contract. *Mutual Life Ins. Co. of New York* v. *Cohen*, 262.

INSURANCE (MARINE).

1. In marine insurance the general rule is firmly established in this court that the insurers are not liable upon memorandum articles except in case of actual total loss, and that there can be no actual total loss when a cargo of such articles has arrived in whole or in part, in specie, at the port of destination, but only when it is physically destroyed, or its value extinguished by a loss of identity. *Washburn & Moen Manufacturing Co.* v. *Reliance Marine Insurance Co.*, 1.
2. In this case the entire cargo was warranted by the memorandum clause free from average unless general, and by a rider, free from particular average, but liable for absolute total loss of a part. Under these provisions the insurers were not liable for a constructive total loss, but only for an actual total loss of the whole, or of a distinct part. *Ib.*
3. The carrying vessel was stranded, and, having been got off in a shattered condition, was subsequently condemned and sold on libels for salvage; most of the cargo was saved and reached the port of destination in specie, a portion damaged, and a substantial part wholly uninjured. *Held*, That the owner could not recover for a constructive total loss, nor for an actual total loss of the whole. *Ib.*
4. No right to abandon existed, and the insurers explicitly refused to accept the abandonment tendered. If the cargo saved was carried from the port of distress to the port of destination by the insurers, which

was denied, this was no more than, by the terms of the policy, they had the right to do without prejudice, and could not be held to amount to an acceptance. *Ib.*

5. The Circuit Court did not err in declining to leave the question of actual total loss of the entire cargo, or the question of acceptance, to the jury. *Ib.*

INTERSTATE COMMERCE.

See CIGARETTES.

JUDGMENT.

1. The Wabash Railroad Company was a consolidated railway corporation, separately organized under the laws of Illinois and the laws of Missouri. It became indebted to Tourville, who was in its employ, for a small sum for which he sued it before a justice of the peace for St. Louis. The complicated proceedings which followed are fully set forth in the opinion of this court. The judgment of the trial court being set aside by the Circuit Court, this court holds that the judgment of the Circuit Court was undoubtedly final; that it completed the litigation; and that it left nothing to the lower court but to enter the judgment which it directed. *Wabash Railroad Co.* v. *Tourville*, 322.
2. The holding by the Supreme Court of Illinois that the judgment was foreign to that State, and therefore not subject to garnishment there, is sustained by the weight of authority. *Ib.*

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. Proceedings to limit the liability of ship-owners are admiralty cases; the decrees of the Circuit Courts of Appeal therein are made final by the sixth section of the judiciary act of March 3, 1891; and appeals to this court therefrom will not lie. *Oregon Railroad &c. Co.* v. *Balfour*, 55.
2. An assignment of error in this court that the decision of a state Supreme Court was inconsistent with certain paragraphs of an alleged brief putting forward a Federal question, does not amount to a compliance with the requirements of § 709 of the Revised Statutes. *Chapin* v. *Fye*, 127.
3. Where a Federal question is raised in the state courts, the party who brings the case to this court cannot raise here another Federal question, which was not raised below. *Ib.*
4. Where the right of removal depends upon the existence of a separable controversy, the question is to be determined by the condition of the record in the state court at the time of the filing of the petition to remove. *Chesapeake & Ohio Railway Co.* v. *Dixon*, 131.
5. In an action of tort, the cause of action is whatever the plaintiff declares it to be in his pleading, and matters of defence cannot be availed of as ground of removal. *Ib.*
6. When concurrent negligence is charged, the controversy is not separable, and as the complaint in this case, reasonably construed, charged concurrent negligence, the court declines to hold that the state courts erred in retaining jurisdiction. *Ib.*

7. The state courts of Michigan having recognized this action as a proper one under the laws of that State for the relief sought by the plaintiff, this court has jurisdiction to consider the questions of a Federal nature decided herein. *Scranton* v. *Wheeler*, 141.
8. That a Federal statute was construed unfavorably to one of the parties to a suit is no ground for jurisdiction by this court, unless such construction was not only unfavorable, but was against the right, etc., specially set up and claimed under the statute; in which case the party so setting up and claiming the right under the statute can obtain a review here. *Kizer* v. *Texarkana & Fort Smith Railway Co.*, 199.
9. The controversy between the State of Maryland and the estate of the ward having been finally settled in favor of the State, and the only Federal question presented in this case having been determined in favor of the State, this court declines to consider the purely local question whether a judgment binding the estate binds also the sureties on the guardian's bond. *Baldwin* v. *Maryland*, 220.
10. In an action by a chattel mortgagee of certain cattle against the purchaser of the same at a marshal's sale upon execution, the question was whether a chattel mortgage upon a portion of such cattle, which did not identify the particular animals covered by it, was good as against the purchaser of the entire lot at the marshal's sale. *Held:* That this presented no Federal question. *Avery* v. *Popper*, 305.
11. With respect to writs of error from this court to judgments of state courts, in actions between purchasers under judicial proceedings in the Federal courts and parties making adverse claims to the property sold, the true rule is this: That the writ will lie, if the validity or construction of the judgment of the Federal court, or the regularity of the proceedings under the execution, are assailed; but if it be admitted that the judgment was valid and these proceedings were regular, that the purchaser took the title of the defendant in the execution, and the issue relates to the title to the property as between the defendant in the execution, or the purchaser under it, and the party making the adverse claim, no Federal question is presented. *Ib.*
12. The judgment of a state court, reversing the judgment of an inferior court, on account of its refusal to change the venue of the action, and remanding the case for further proceedings, is not a final judgment to which a writ of error will lie. *Cincinnati Street Railway Company* v. *Snell*, 395.
13. Defendant being convicted of murder, carried the case to the Supreme Court of the State, but made no claim there of a Federal question. *Held:* That before applying to a Circuit Court of the United States for a writ of *habeas corpus* he should have exhausted his remedy in the state court, either by setting up the Federal question on his appeal to the Supreme Court, or by applying to the state court for a writ of *habeas corpus*. *Davis* v. *Burke*, 399.
14. The constitution of Idaho, providing for the prosecutions of felonies by information, is so far self-executing that a conviction upon information cannot be impeached here upon the ground that defendant has been denied due process of law. *Ib.*

15. The question whether a convict shall be executed by the sheriff, as the law stood at the time of his trial and conviction, or by the warden of the penitentiary, as the law was subsequently amended, or whether he shall escape punishment altogether, involves no question of due process of law under the Fourteenth Amendment. *Ib.*

16. A petitioner in an application for a writ of prohibition to the judges of a Court of Land Registration upon the ground that the contemplated proceedings in said court denied to parties interested due process of law, cannot maintain a writ of error from this court to the Supreme Court of the State without showing that he is personally interested in the litigation, and has been, or is likely to be, deprived of his property without due process of law. *Tyler v. Judges of the Court of Registration*, 405.

17. The fact that other persons in whom he has no personal interest and who do not appear in the case, may suffer in that particular is not sufficient. *Ib.*

18. In a case brought here from a Circuit Court, the opinion regularly filed below, and which has been annexed to and transmitted with the record, may be examined in order to ascertain, in cases like this, whether either party claimed that a state statute upon which the judgment necessarily depended in whole or in part, was in contravention of the Constitution of the United States; but this must not be understood as saying that the opinion below may be examined in order to ascertain that which, under proper practice, should be made to appear in a bill of exceptions, or by an agreed statement of facts, or by the pleadings. *Loeb* v. *Columbia Township*, 472.

19. As the bonds in suit in this case were executed by the defendant township, a corporation, and are payable to bearer, the present holder, being a citizen of a State different from that of which the township was a corporation, was entitled to sue upon them, without reference to the citizenship of any prior holder. *Ib.*

20. The Circuit Court erred in holding that the petition in this case made a case that necessarily brought it within the decision in *Norwood* v. *Baker*, 172 U. S. 269. *Ib.*

21. Even if the third section of the statute of Ohio in question here be stricken out as invalid, the petition makes a case entitling the plaintiff to a judgment against the township. *Ib.*

22. The contention that, independently of any question of Federal law, the statute of Ohio under which the bonds were issued was in violation of the constitution of that State in that, when requiring the defendant township to widen and extend the avenue in question the legislature exercised administrative, not legislative, powers, is not supported by the decisions of the Supreme Court of Ohio made prior to the issuing of these bonds. *Ib.*

23. If a claim is made in a Circuit Court that a state law is invalid under the Constitution of the United States, this court may review the judgment at the instance of the unsuccessful party. *Ib.*

24. The authority of this court to review the action of the court below in

this case must be found in one of three classes of cases, in which, by section 5 of the Judiciary Act of March 3, 1891, an appeal or writ of error may be taken from a District or Circuit Court direct to this court. The classes of cases alluded to are as follows: 1. Cases in which the jurisdiction of the court is in issue, in which class of cases the question of jurisdiction alone is to be certified from the court below for decision; 2. Cases involving the construction or application of the Constitution of the United States; and 3. Cases in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question. The court is of opinion that the case at bar is not embraced within either of those classes of cases. *Arkansas* v. *Schlieyholz*, 598.

25. The final ruling of the state court at the trial of this case being based upon a state of facts which put the state statute in question entirely out of the case, no Federal question remained for the consideration of this court. *Missouri, Kansas & Texas Railway Co.* v. *Ferris*, 602.
26. Final decrees of the Court of Appeals of the District of Columbia in respect of final settlements in the orphan's court, may be reviewed in this court on appeal. *Kenaday* v. *Sinnott*, 606.
27. This court has jurisdiction to examine the proceedings in the Circuit Court of Appeals, and to reverse its order if its ruling is found erroneous, or the reverse if its ruling was correct. *Southern Railway Co.* v. *Postal Telegraph Cable Co.*, 641.

See MILITARY TRIBUNALS.

B. JURISDICTION OF CIRCUIT COURTS OF APPEALS.

1. A Circuit Court of Appeals has no jurisdiction to review upon writ of error the trial, judgment and sentence of an Indian to imprisonment for life, founded upon a verdict rendered on a trial of an indictment of the Indian for murder, by which verdict the jury find the defendant "guilty as charged in the indictment, without capital punishment." *Good Shot* v. *United States*, 87.
2. The receiver in this case, having voluntarily brought the case into the Circuit Court, by whose appointment he held his office, cannot, after that court has passed upon the matter in controversy, be heard to object to the power of that court to render judgment therein. *Baggs* v. *Martin*, 206.
3. *Luxton* v. *North River Bridge Company*, 147 U. S. 337, is decisive of the question raised in this case whether a final judgment or order has been entered by the Circuit Court which could be taken by writ of error to the Circuit Court of Appeals. *Southern Railway Co.* v. *Postal Telegraph Cable Co.*, 641.

See CONSTITUTIONAL LAW, 2.

C. JURISDICTION OF CIRCUIT COURTS.

See CONSTITUTIONAL LAW, 2.

D. JURISDICTION OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

1. Where, in a controversy between an executrix and next of kin, a decree of the orphans' court approving the final account of the executrix has been reversed by the Court of Appeals on the appeal of the next of kin, and the cause remanded that the account might be restated in accordance with the principles set forth in the opinion of the Court of Appeals, involving a recasting of the entire account, the decree of the Court of Appeals is not final. *Kenaday* v. *Sinnott*, 606.
2. The Court of Appeals of the District of Columbia, sitting as an orphans' court, has jurisdiction over the settlement of estates, and controversies in relation thereto between the next of kin and the executrix, and resort to the chancery court is unnecessary. *Ib.*

LACHES.

See CASES AFFIRMED AND FOLLOWED, 2;
TRADE MARK.

LEASE.

See ESTOPPEL.

LIS PENDENS.

The conclusions in this case of the Supreme Court of Louisiana depended alone upon an interpretation of the local law of the State governing the sale, the record of title to real estate, and the nature, under the local law, of the rights of a mortgage creditor; and, accepting the rule of property under the law of that State to be as so announced, the proceedings in the equity cause were not *res judicata*, and the *lis pendens* created by that suit did not prevent the exercise by Maxwell of his right to foreclose his mortgage, and the title which he acquired in the foreclosure proceedings was not impaired by the pendency of that suit. *Abraham* v. *Casey*, 210.

MILITARY TRIBUNALS.

1. Section 716, Rev. Stat., does not empower this court to review the proceedings of military tribunals by certiorari. *In re Vidal*, 126.
2. The act of April 12, 1900, c. 191, having discontinued the tribunal established under that act, and created a successor, authorized to take possession of its records and to take jurisdiction of all cases and proceedings pending therein, this court has no jurisdiction to review its proceedings. *Ib.*
3. Such tribunals are not courts with jurisdiction in law or equity, within the meaning of those terms as used in Article Three of the Constitution. *Ib.*

MUNICIPAL CORPORATION.

1. The Supreme Court of the State of Missouri having decided that the provision of the state constitution respecting the enactment of registration laws does not limit the power of the General Assembly to create

more than one class composed of cities having a population in excess of one hundred thousand inhabitants, this conclusion must be accepted by this court. *Mason* v. *Missouri*, 328.

2. The general right to vote in the State of Missouri is primarily derived from the State; and the elective franchise, if one of the fundamental privileges and immunities of the citizens of St. Louis, as citizens of Missouri and of the United States, is clearly such franchise, as is regulated and established by the laws or constitution of the State in which it is to be exercised. *Ib.*
3. The power to classify cities with reference to their population having been exercised, in this case, in conformity with the constitution of the State, the circumstance that the registration law in force in the city of St. Louis was made to differ in essential particulars from that which regulated the conduct of elections in other cities in the State of Missouri, does not, in itself, deny to the citizens of St. Louis the equal protection of the laws; nor did the exercise by the General Assembly of Missouri of the discretion vested in it by law, give rise to a violation of the Fourteenth Amendment to the Constitution of the United States. *Ib.*

NEW ORLEANS DRAINAGE.

1. Without implying that the reasoning of the state court by which the conclusion was reached that under the statute of Louisiana both the Board of Liquidation and the Drainage Commission occupied such a fiduciary relation as to empower them to assert that the enforcement of the provisions of the constitution of the State would impair the obligations of the contracts entered into on the faith of the collection and application of the one per cent tax, and of the surplus arising therefrom, this court adopts and follows it, as the construction put by the Supreme Court of the State of Louisiana on the statutes of that State, in a matter of local and non-Federal concern. *Board of Liquidation of New Orleans* v. *Louisiana*, 622.
2. The proposition that the judgment of the Supreme Court of the State of Louisiana rests upon an independent non-Federal ground, finds no semblance of support in the record. *Ib.*
3. Considering the many, and in some respects ambiguous statutes of the State of Louisiana, this court concludes, as a matter of independent judgment, that the contract rights of the parties were correctly defined by the Supreme Court of that State. *Ib.*
4. This court's affirmance of the judgment below is without prejudice to the right of the Board of Liquidation and the Drainage Commission to hereafter assert the impairment of the contract right which would arise from construing the judgment contrary to its natural and necessary import, so as to deprive the Board of Liquidation of the power, in countersigning the bonds, to state thereon the authority in virtue of which they are issued. *Ib.*

ORIGINAL PACKAGE.

See CIGARETTES.

PATENT FOR INVENTION.

1. An examination of the history of the appellant's claim shows that in order to get his patent he was compelled to accept one with a narrower claim than that contained in his original application; and it is well settled that the claim as allowed must be read and interpreted with reference to the rejected claim and to the prior state of the art, and cannot be so construed as to cover either what was rejected by the Patent Office, or disclosed by prior devices. *Hubbell* v. *United States*, 77.
2. This court concurs with the court below in holding that the cartridges made and used by the United States were not within the description contained in the appellant's claim. *Ib.*

PLEADING.

See CONSTITUTIONAL LAW, 3.

PRACTICE.

1. The petition for a rehearing in this case is denied. *Hubbell* v. *Hubbell* (No. 198, October Term, 1897), 86.
2. The defendant in the court below moved to dismiss this case on the ground that the contract in relation to the property in question was with Griffith alone, and, that motion being denied, proceeded to offer evidence. *Held* that he could not assign the refusal to dismiss as error. *Sigafus* v. *Porter*, 116.
3. The briefs filed in this case are in plain violation of the amendment to Rule 31, adopted at the last term, and printed in a note to this case. *Wisconsin, Minnesota &c. Railroad* v. *Jacobson*, 287.
4. Where both courts below have concurred in a finding of fact, it will, in this court, be accepted as conclusive, unless it affirmatively appears that the lower courts obviously erred. *Workman* v. *New York City, &c.*, 552.

PUBLIC LAND.

1. The fourth subdivision of section 13 of the act establishing the Court of Private Land Claims, which provides that "no claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority," applies to this case, and the claimant has no right to ask that court to pass upon its claim. *Las Animas Land Grant Co.* v. *United States*, 201.

RECEIVER.

1. An action against a receiver of a state corporation is not a case arising under the Constitution and laws of the United States simply by reason of the fact that such receiver was appointed by a court of the United States. *Gableman* v. *Peoria, Decatur & Evansville Railway Co.*, 335.
2. A receiver appointed by a Federal court may be sued in that court as well as in the state court, but if in the state court, he is not entitled to remove the cause on the sole ground of his appointment by the Federal court. *Ib.*

RAILROAD.

1. This case involves deciding whether the defendants in error are liable for the damage occasioned to certain property, resulting from a fire which occurred on October 28, 1894, in a railroad yard at East St. Louis, Illinois. At the time of the fire Bosworth was operating the railway as receiver. The decision depends largely, if not entirely, on facts, which are stated at great length by the court, both in the statement of the case, and in its opinion. These papers are most carefully prepared. While both deal with facts, those facts are stated with clearness, with fullness, with completeness, and with unusual care. They leave nothing untouched. Without treating them with the same fullness, the reporter feels himself unable to prepare a headnote which could convey an adequate and just account of the opinion and decision of the court. Under these circumstances he deems it best not to attempt an impossibility, but to respectfully ask the readers of this headnote to regard the opinion of the court in this case as incorporated into it. *Huntting Elevator Co.* v. *Bosworth, Receiver*, 415.

2. The plaintiff, an employé of the railway company, was injured while at work for it. With reference to his contention that the trial court erred in directing a verdict for the defendant, and in failing to leave the question of negligence to the jury, this court, after stating the facts, said: (1) That while in the case of a passenger, the fact of an accident carries with it a presumption of negligence on the part of the carrier, a presumption which, in the absence of some explanation or proof to the contrary is sufficient to sustain a verdict against him, a different rule obtains as to an employé. The fact of accident carries with it no presumption of negligence on the part of the employer, and it is an affirmative fact for the injured employé to establish, that the employer has been guilty of negligence; (2) that in the latter case it is not sufficient for the employé to show that the employer may have been guilty of negligence, but the evidence must point to the fact that he was; and where the testimony leaves the matter uncertain, and shows that any one of half a dozen things may have brought about the injury, for some of which the employer is responsible, and for some of which he is not, it is not for the jury to guess between these half a dozen causes, and find that the negligence of the employer was the real cause when there is no satisfactory foundation in the testimony for that conclusion; (3) that while the employer is bound to provide a safe place and safe machinery in which and with which the employé is to work, and while this is a positive duty resting upon him, and one which he may not avoid by turning it over to some employé, it is also true that there is no guaranty by the employer that the place and machinery shall be absolutely safe. He is bound to take reasonable care and make reasonable effort, and the greater the risk which attends the work to be done and the machinery to be used, the more imperative is the obligation resting upon him. *Patton* v. *Texas & Pacific Railway Co.*, 658.

3. The rule in respect to machinery, which is the same as that in respect to place, was accurately stated by Mr. Justice Lamar for this court in *Washington & Georgetown Railroad* v. *McDade*, 135 U. S. 554, 570. *Ib.*

RES JUDICATA.

See LIS PENDENS.

STATUTES.

A. OF THE UNITED STATES.

See ADMIRALTY, 1;
CRIMINAL LAW;
CUSTOMS DUTIES, 1, 2, 3;
INDIAN, 2;
JURISDICTION A, 1, 2, 3;
MILITARY TRIBUNALS, 1, 2;
PUBLIC LAND;
TAXATION, 1.

B. OF STATES AND TERRITORIES.

Georgia. *See* CONSTITUTIONAL LAW, 9;
TAXATION, 2.

Kentucky. *See* CONSTITUTIONAL LAW, 19.

Louisiana. *See* CONSTITUTIONAL LAW, 4;
NEW ORLEANS DRAINAGE.

New York. *See* INSURANCE (LIFE).

Ohio. *See* CONSTITUTIONAL LAW, 20, 21.

SURETY.

A surety who signs an unconditional promise is not discharged from liability thereon by reason of any expectation, reliance or condition, unless notice thereof be given to the promisee; or, in other words, the contract stands as expressed in the writing in the absence of conditions which are known to the recipient of the promise. *Joyce* v. *Auten*, 591.

TAXATION.

1. The constitution of Minnesota of 1858, still in force, provided that all taxes should be as nearly equal as may be, and that the property taxed should be equalized and uniform throughout the State. It made provision for certain defined exemptions, and provided for uniform and equal taxation throughout the State. Before that time, namely, on September 28, 1850, Congress had granted to the several states, Minnesota included, the swamp and overflowed lands within each; and other grants were subsequently made, as stated in the opinion of the court, subject to be taxed only as the land should be sold. There were also statutes passed in regard to the taxation of land granted to the Lake Superior and Pacific Railroad Company, which are set forth in the opinion of the court. In 1896 an act was passed, repealing all former laws exempting from taxation, and providing for the taxation of the lands granted to railroads as other lands were assessed and taxed. *Held*, that in this legislation a valid contract was created, providing for the taxation of all railroad property (lands included) on the basis of a per cent of the gross earnings, which contract was impaired by the legislation of 1896, withdrawing the lands from the arrangement, and directing their taxation according to their actual cash value; that as to the St. Paul & Duluth Railroad Company a contract was made, and only Congress can inquire into the manner in which the State exe-

cuted the trust thereby created and disposed of the lands; and that, as to the Northern Pacific Company, the legislation changed materially the terms of the contract between the State and that company. *Stearns* v. *Minnesota*, 223.

2. By a general revenue act of the State of Georgia, a specific tax was levied upon many occupations, including that of "emigrant agent," meaning a person engaged in hiring laborers to be employed beyond the limits of the State. *Held*, that the levy of the tax did not amount to such an interference with the freedom of transit, or of contract, as to violate the Federal Constitution. *Williams* v. *Fears*, 270.
3. Nor was the objection tenable that the equal protection of the laws was denied because the business of hiring persons to labor within the State was not subjected to a like tax. *Ib.*
4. The imposition of the tax fell within the distinction between interstate commerce, or an instrumentality thereof, and the mere incidents which may attend the carrying on of such commerce. These labor contracts were not in themselves subjects of traffic between the States, nor was the business of hiring laborers so immediately connected with interstate transportation or interstate traffic that it could correctly be said that those who followed it were engaged in interstate commerce, or that the tax on that occupation constituted a burden on such commerce. *Ib.*
5. In this record there is no averment and no proof of any violation of law by the assessors of New York. The mere fact that the law gives the assessors in the case of corporations two chances to arrive at a correct valuation of the real estate of corporations when they have but one in the case of individuals, cannot be held to be a denial to the corporation of the equal protection of the laws, so long as the real estate of the corporation is, in fact, generally assessed at its full value. *New York State* v. *Barker (No. 1)*, 279.
6. This court cannot, with reference to the action of the public and sworn officials of New York city, assume, without evidence, that they have violated the laws of their State, when the highest court of the State refuses, in the absence of evidence, to assume such violation. *Ib.*

TRADE MARK.

1. In 1862, plaintiff's husband discovered a spring of bitter water in Hungary, and was granted by the Municipal Council of Buda permission to sell such water, and to give the spring the name of "Hunyadi Spring." He put up these waters in bottles of a certain shape and with a peculiar label, and opened a large trade in the same under the name of "Hunyadi Janos." In 1872, one Markus discovered a spring of similar water and petitioned the Council of Buda for permission to sell the water under the name of "Hunyadi Matyas." This was denied upon the protest of Saxlehner; but in 1873 the action of the Council was reversed by the Minister of Agriculture, and permission given Markus to sell water under the name of "Hunyadi Matyas." Other proprietors seized upon the word "Hunyadi" which became generic as applied to bitter waters. This continued for over twenty year when, in 1895, a

new law was adopted, and Saxlehner succeeded in the Hungarian courts in vindicating his exclusive right to the use of the word "Hunyadi." In 1897 he began this suit. *Held:* That the name "Hunyadi" having become public property in Hungary, it also became, under our treaty with the Austro-Hungarian Empire in 1872, public property here; that the court could not take notice of the law of Hungary of 1895 reinstating the exclusive right of Saxlehner, and that the name having also become public property here, his right to an exclusive appropriation was lost; *Held also:* That even if this were not so, he, knowing the name "Hunyadi" had become of common use in Hungary, was also chargeable with knowledge that it had become common property here, and that he was guilty of laches in not instituting suits, and vindicating his exclusive right to the word, if any such he had; *Held also:* That acts tending to show an abandonment of a trade mark being insufficient, unless they also show an actual intent to abandon, there was but slight evidence of any personal intent on the part of Saxlehner to abandon his exclusive right to the name "Hunyadi," and that a company, to whom he had given the exclusive right to sell his waters in America was not thereby made his agent and could not bind him by its admissions: *Held also:* That the fact that he registered the trade mark "Hunyadi Janos" did not estop him from subsequently registering the word "Hunyadi" alone; *Held also:* That the appropriation by other parties of his bottle and label, being without justification or excuse, was an active and continuing fraud upon his rights, and that the defence of laches was not maintained; *Held also:* That the adoption by the defendant of a small additional label, distinguishing its importation from others did not relieve it from the charge of infringement, inasmuch as the peculiar bottles and labels of the plaintiff were retained. *Saxlehner v. Eisner & Mendelson Co.*, 19.

2. The term trade mark means a distinctive mark of authenticity, through which the products of particular manufacturers or the vendible commodities of particular merchants may be distinguished from those of others. *Elgin National Watch Co. v. Illinois Watch Case Co.* 665.

3. As its office is to point out distinctively the origin or ownership of the articles to which it is affixed, no sign or form of words can be appropriated as a valid trade mark, which from the fact conveyed by its primary meaning, others may employ with equal truth, and with equal right, for the same purpose. *Ib.*

4. Words which are merely descriptive of the place where an article is manufactured cannot be monopolized as a trade mark, and this is true of the word "Elgin" as in controversy in this case. *Ib.*

5. Where such a word has acquired a secondary signification in connection with its use, protection from imposition and fraud will be afforded by the courts, while at the same time it may not be susceptible of registration as a trade mark under the act of Congress of March, 1881. *Ib.*

6. The parties to this suit being all citizens of the same State and the word in controversy being a geographical name, which could not be properly registered as a valid trade mark under the statute, the Circuit Court had no jurisdiction. *Ib.*

7. In view of this conclusion and of the fact that the constitutionality of the act of Congress was not passed on by the court below, that subject is not considered. *Ib.*

WILL.

1. Certain familiar rules of construction of wills reiterated: (*a*) That the intention of the testator must prevail; (*b*) that the law prefers a construction which will prevent a partial intestacy to one that will permit it, if such a construction may reasonably be given; (*c*) that the courts in general are averse from construing legacies to be specific. *Kenaday* v. *Sinnott*, 606.
2. Ademption is the extinction or withdrawal of a legacy in consequence of some act of the testator equivalent to its revocation or clearly indicative of an intention to revoke. *Ib.*
3. In this case, in view of the general intention of the testator as plainly shown by the provisions of his will taken together, and of the rules against partial intestacy and against treating legacies as specific, the bequest of money as therein made to testator's widow is construed not to have been a specific legacy but rather in the nature of a demonstrative legacy, and a change, between the date of the will and the death of the testator, from money into bonds, *held* not to be an ademption, and so a rule of law rather than a question of intention. *Ib.*